

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

METRO FUEL, LLC,

Plaintiff(s),

No. C 07-6067 PJH

v.

ORDER

CITY OF SAN FRANCISCO, et al.,

Defendant(s).

Before the court is a letter from defendants' counsel accompanied by two separate proposed forms of judgment submitted by each party. Counsel's letter indicates that the proposed judgments differ only in one respect – defendants' includes an award of costs and plaintiff's does not. It is not clear to the court exactly what the parties contemplate by this submission. Are the parties asking the court to decide whether costs should or should not be awarded to the defendants as the prevailing parties? If so, on what basis should the court inform its judgment on that question? No objection has been lodged with the court and no basis has been provided for contravening the clear language of Fed. R. Civ. P. 54(d)(1), which provides in pertinent part, "Unless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney's fees – **should** be allowed to the prevailing party." (emphasis added).

Moreover, plaintiff's proffered form of judgment would not serve the purpose of denying costs to defendants. Because an award of costs to the prevailing party is the rule, the absence of a specific reference to costs does not result in the Clerk not taxing costs. Rather a denial of costs requires an explicit order of the court. Thus, silence will result in an award of costs and it matters not which of the proffered forms of judgment the court

1 signs.

2 **IT IS SO ORDERED.**

3 Dated: March 23, 2011



PHYLLIS J. HAMILTON
United States District Judge

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